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**HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND**

HONOURABLE SRI JUSTICE RAMESH

RANGANATHAN

WRIT APPEAL NO:1016 of 2006

DATED: 13-12-2006

Between:

1. The Chairman, APSEB, Vidyuth Soudha, Hyderabad and another

.....
APPELLANTS

AND

Md.Sulaiman

.....**RESPONDENT**

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JUDGMENT: (per The Hon'ble Sri Justice Ramesh Ranganathan)

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Aggrieved by the orders, passed in W.P.No.1347 of 1998 dated 19-07-2005 wherein the impugned order, holding that the respondent-petitioner was deemed to have resigned from service, was set aside, the present writ appeal is filed.

The appellant-corporation had exercised the powers under

Regulation 28 (3) of A.P.S.E.B. Employees Service Regulations Part-II in holding that the respondent-petitioner was deemed to have resigned from service.

Sri A.Veera Swamy, learned Standing Counsel for the appellant-corporation, would fairly concede that the said regulation has been struck down as *ultra vires* by the Supreme Court. Learned counsel would fairly submit that, in view of the aforesaid provision being declared illegal, the order of the learned Single Judge in setting aside the order of termination cannot be faulted. According to the learned counsel, the grievance of the appellant is limited to the extent that the learned Single Judge had directed the appellant to pay arrears and settle all other benefits arising there from. Learned counsel would submit that the order of the learned Single Judge, in effect, precluded the appellants from taking action against the respondent-petitioner in accordance with law. We find considerable force in this submission. The mere fact that Regulation 28 (3) has been struck down by the Supreme Court would not preclude the appellant from taking action against the respondent-petitioner in accordance with law for his unauthorized absence from duty for a period in excess of three years. The order of the learned Single Judge, to the extent the appellant was directed to pay the respondent-petitioner arrears of salary with all other benefits, is liable to be set aside.

In this context it is useful to refer to the order of the Division Bench of this Court, in W.A.No.1767 of 2005, confirming the order passed in W.P.No.5630 of 2005 dated 04-07-2005 wherein the learned Single Judge, while setting aside the impugned order, had left it open to the Corporation to pass appropriate orders and take appropriate action in accordance with law. Following the order of the Division Bench, in W.A.No.1767 of 2005 dated 04-10-2005, there shall be a similar order.

The order of the learned Single Judge setting aside the impugned order is confirmed. The order of the learned Single Judge shall, however, not preclude the appellants herein from passing appropriate orders against the petitioner herein in accordance with law, within a period of six months from the date of receipt of a copy of this order. The order of the learned Single Judge, to the extent the appellants herein were directed to pay arrears of salary and settle all other benefits to the petitioner, is set aside.

The Writ Appeal is accordingly disposed of. However, in the circumstances, without costs.

B.PRAKASH RAO, J

RAMESH RANGANATHAN, J

13th December, 2006

SKM